

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2839/1dn
ARG:wlj:rs

June 13, 2003

ATTN: Melanie Hartsough

As requested, the attached draft is a companion bill identical to LRB-1124/3. The initial applicability provision in the attached draft may be subject to challenge on constitutional due process grounds and may be subject to abuse by litigants because it basically changes the rules relating to litigating a cause of action after the cause of action has already accrued. That is, the "time trigger" in the initial applicability provision of the attached draft is the date that the plaintiff chooses to file suit, not the date of the accident. Thus, a defendant who had a right to introduce evidence of the plaintiff's nonuse of a helmet when the cause of action accrued (the date of the accident) may lose that right between the date of the accident and the date suit is filed (typically two to three years later). It is therefore not customary to draft an initial applicability provision in this manner, but I have done so because it was specifically requested.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us